

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JOHN E BETTYS.

Plaintiff,

V.

KEVIN QUIGLEY et al.,

Defendants.

CASE NO. 3:16-CV-05076-RJB-JRC

REPORT AND RECOMMENDATION

NOTED FOR: DECEMBER 16, 2016

The District Court has referred this 42 U.S.C. § 1983 civil rights action to United States Magistrate Judge J. Richard Creature. The Court's authority for the referral is 28 U.S.C. § 636(b)(1)(A) and (B), and Magistrate Judge Rules MJR3 and MJR4.

Defendants filed the pending motion to dismiss on May 20, 2016. Dkt. 47. After the motion to dismiss was filed, the Court granted plaintiff's motion to consolidate (Dkt. 62) and directed plaintiff to file one amended complaint setting forth all claims in the consolidated matter on or before December 10, 2016. Dkt. 80.

An amended complaint supersedes the original complaint. *Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992). The original complaint is “treated thereafter as non-existent.” *Loux v.*

1 *Rhay*, 375 F.2d 55, 57 (9th Cir. 1967) *overruled on other grounds by Lacey v. Maricopa County*,
2 693 F.3d 896 (9th Cir. 2012). Defendants' motion to dismiss attacks the original complaint,
3 which will be "non-existent" because plaintiff was granted leave to file an amended complaint.
4 Dkt. 80. Accordingly, the undersigned recommends that defendants' motion to dismiss (Dkt. 47)
5 be denied as moot.

6 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil
7 Procedure, the parties shall have fourteen (14) days from service of this Report to file written
8 objections. See also Fed. R. Civ. P. 6. Failure to file objections will result in a waiver of those
9 objections for purposes of appeal. *Thomas v. Arn*, 474 U.S. 140 (1985). Accommodating the time
10 limit imposed by Rule 72(b), the clerk is directed to set the matter for consideration on
11 December 16, 2016 as noted in the caption.

12 Dated this 22nd day of November, 2016.

13 
14 J. Richard Creatura
15 United States Magistrate Judge